

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|---|------------------------------------|--|
| Investigator: Christopher DeNitto | Team: Team # 2 | CCRB Case #: 200702753 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Sunday, 02/25/2007 12:30 AM | Location of Incident: In the hallway outside of § 87(2)(b) | Precinct: 44 | 18 Mo. SOL 8/25/2008 | EO SOL 8/25/2008 | |
| Date/Time CV Reported Tue, 02/27/2007 9:49 AM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 02/27/2007 9:49 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. SGT Osvaldo Nunez | 03579 | 918086 | 044 PCT |
| 2. POM Robert Navarro | 07958 | 937169 | 044 PCT |
| 3. POM An Officer | | | 044 PCT |
| 4. Officers | | | 044 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. LT Patrick Cortright | 00000 | 910420 | 044 PCT |
| 2. POM Miguel Sanchez | 06174 | 940701 | 044 PCT |
| 3. POM Carlos Zapata | 27730 | 916951 | 044 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.SGT Osvaldo Nunez | Abuse: Sgt. Osvaldo Nunez refused to provide his name and shield number to § 87(2)(b) | § 87(2)(b) |
| B. Officers | Force: Officers struck § 87(2)(b) with a flashlight. | § 87(2)(b) |
| C.SGT Osvaldo Nunez | Force: Sgt. Osvaldo Nunez struck § 87(2)(b) with a nightstick. | § 87(2)(b) |
| D.POM An Officer | Force: An Officer used pepper spray against § 87(2)(b) | § 87(2)(b) |
| E.POM Robert Navarro | Force: PO Robert Navarro used physical force against § 87(2)(b) | § 87(2)(b) |

Synopsis

On February 27, 2007, § 87(2)(b) called the CCRB and filed a complaint regarding an incident that took place on February 25, 2007. § 87(2)(b) and his wife § 87(2)(b) attended a birthday party at § 87(2)(b)'s apartment, § 87(2)(b) § 87(2)(b) in the Bronx. At approximately 12:30am Sgt. Osvaldo Nunez, PO Carlos Zapata, PO Miguel Sanchez and PO Robert Navarro responded to the location to address a quality of life complaint. When they arrived at the apartment they could hear loud music coming from § 87(2)(b) and it was clear that a party was taking place. Sgt. Nunez knocked on the door and § 87(2)(b) answered. Sgt. Nunez was able to see inside the apartment and it was evident that there were a large number of people inside who were drinking alcohol. Sgt. Nunez also stated that there were a number of young children at the party, which was unsafe considering the amount of alcohol that was being consumed. Sgt. Nunez and § 87(2)(b) spoke for several minutes and Sgt. Nunez explained to § 87(2)(b) that it was time to end the party. § 87(2)(b) stated that when he asked Sgt. Nunez for his name, Sgt. Nunez responded, "Don't worry about my fucking name" (**Allegation A**). § 87(2)(b) stated that he was then pulled into the hallway at which time officers struck him with their flashlights (**Allegations B**) and Sgt. Nunez struck him with his nightstick (**Allegation C**). § 87(2)(b) stated that while he was on the floor an officer pepper sprayed him in the face and eyes (**Allegation D**) before he was finally handcuffed. PO Navarro then escorted § 87(2)(b) downstairs and out of the building. § 87(2)(b) maintained that PO Navarro knocked him down and dragged him down the steps on his back and buttocks (**Allegation E**). § 87(2)(b) was taken to the 44th Precinct where he was charged with § 87(2)(b). § 87(2)(b) was later transported to § 87(2)(b) via ambulance.

§ 87(2)(g)

[REDACTED]

Summary of Complaint

Civilian Statements

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on March 6, 2007. On February 24, 2007, § 87(2)(b)'s niece, § 87(2)(b) had a birthday party for her § 87(2)(b)-old niece at her apartment, § 87(2)(b) § 87(2)(b) in the Bronx. The party began at approximately 6:00pm on February 24, 2007, and continued on past midnight into February 25, 2007. § 87(2)(b) arrived at the party at approximately 11:30pm and the adults present at this time were § 87(2)(b) his wife § 87(2)(b) § 87(2)(b) her sister § 87(2)(b)'s husband § 87(2)(b) and his two sisters whose names § 87(2)(b) could not provide. When § 87(2)(b) arrived at the party he brought with

him two cans of beer and a half-pint bottle of Hennessy. § 87(2)(b) drank one of the beers immediately and put the other beer in the refrigerator. After § 87(2)(b) finished the beer he poured himself two shots of Hennessy and then consumed the second beer. § 87(2)(b) maintained that he was not drunk at all.

At approximately 12:30am on February 25, 2007, someone knocked on the apartment door and § 87(2)(b) opened it, revealing numerous officers standing in the hallway. When § 87(2)(b) saw that it was the police he also went to the door to assist § 87(2)(b) in speaking to them. An officer, who § 87(2)(b) identified as a Sergeant (later identified by the investigator as Sgt. Osvaldo Nunez) said to § 87(2)(b) “That’s it the party is over.” § 87(2)(b) then responded, “Alright officer I see that you are breathing hard. This is a kids party and as you can see people are leaving now.” § 87(2)(b) stated that at this point Sgt. Nunez was breathing heavily and was getting very upset. § 87(2)(b) then said, “You have no search warrant so you all can come back” and then she shut the door. Sgt. Nunez knocked on the door again and this time § 87(2)(b) opened it and said, “What’s the problem now officer? What is your name?” to which Sgt. Nunez responded, “Don’t worry about my fucking name.” § 87(2)(b) then said, “Alright, as you can see officer the party is over now.” Sgt. Nunez then grabbed § 87(2)(b) by the front of his shirt, chest high, and attempted to pull him out into the hallway. § 87(2)(b) pulled away briefly, at which time three officers and Sgt. Nunez grabbed § 87(2)(b) again and pulled him out into the hallway. § 87(2)(b) could not provide a description of the three officers that assisted Sgt. Nunez. As soon as § 87(2)(b) was pulled out into the hallway Sgt. Nunez hit him on the forehead with a baton causing § 87(2)(b) to fall to the floor. § 87(2)(b) maintained that there were approximately 100 officers in the hallway and the stairwell but only 3 or 4 officers, PO Carlos Zapata, PO Miguel Sanchez and PO Robert Navarro (identified through the investigation), used physical force on him. § 87(2)(b) stated that he did not resist and went along with what the officers were doing. § 87(2)(b) asked the officers what the problem was and Sgt. Nunez said, “Shut up and stop resisting.” § 87(2)(b) then said, “I’m not resisting officer. Why are you all beating on me?” At this time § 87(2)(b) was struck on the back of his legs, both biceps, his back and the back of his head with batons and flashlights. § 87(2)(b) did not specify which officers hit him. § 87(2)(b) sustained welts and bruises to his legs, back, left and right arms (biceps) and forehead. § 87(2)(b) could not describe the officers who were hitting him because he was lying on the floor with his head in his hands. § 87(2)(b) was then pepper sprayed which caused his vision to become blurred for several minutes. § 87(2)(b) estimated that he was beaten for 20-30 minutes before he was handcuffed. After § 87(2)(b) was handcuffed PO Navarro (described by § 87(2)(b) as a Hispanic or white male approximately 5’2”-5’5” with black curly hair) began to escort him down the steps. As § 87(2)(b) was walking downstairs he was hit again on his back causing him to fall to the ground. § 87(2)(b)’s pants fell down and were around his ankles but PO Navarro did not pick up § 87(2)(b)’s pants. Instead PO Navarro grabbed the waist of § 87(2)(b)’s pants and dragged § 87(2)(b) down the steps on his buttocks. It was not until § 87(2)(b) was dragged down all 6 flights of steps, to the ground floor, that PO Navarro picked up § 87(2)(b)’s pants. § 87(2)(b) insisted that at no point did he resist arrest or strike any of the officers during the incident. The District Attorney informed § 87(2)(b) later, that an officer went to the hospital for treatment on his hands but § 87(2)(b) stated that the injury was from the officer hitting him.

§ 87(2)(b) was taken to the 44th Precinct where he requested medical attention. An officer informed § 87(2)(b) that if he wanted medical attention he would have to be put through the system. § 87(2)(b) was charged with § 87(2)(b). An ambulance arrived at the 44th Precinct a short time later and § 87(2)(b) was transported to § 87(2)(b). § 87(2)(b) received a full body examination and X-rays were taken of his head, back, chest and right arm. § 87(2)(b) was diagnosed with a minor head injury and he was prescribed Motrin (pain reliever) and Cyclobenzaprine (a muscle relaxer) to relieve his pain. A white male officer with short blonde hair then transported § 87(2)(b) back to the 44th Precinct in a marked police car. § 87(2)(b) was not given a property voucher for any of his property that was taken after his arrest. § 87(2)(b) had a black T-Mobile cell phone, a Metrocard, \$180 in cash and a black baseball cap (valued at \$20) taken from him which was not returned.

§ 87(2)(b) provided photos of his injuries that were taken on Monday, February 26, 2007, at approximately 7:00pm. The pictures showed § 87(2)(b) had bruises to his right arm, forehead and fingers.

Results of Investigation

Witness Statements

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on March 6, 2007. On February 24, 2007, § 87(2)(b) attended a party at § 87(2)(b)'s apartment, § 87(2)(b). The party was for § 87(2)(b)'s § 87(2)(b)-old niece whom she only knows as "§ 87(2)(b)". § 87(2)(b) stated that the party began in the late evening of February 24, 2007, and continued on past midnight into February 25, 2007. § 87(2)(b) arrived at the party between 8:00pm and 9:00pm and when she arrived § 87(2)(b) was already present along with § 87(2)(b) and § 87(2)(b). Sometime between 12:00am and 1:00am someone knocked on the apartment door and § 87(2)(b) and § 87(2)(b) answered it. § 87(2)(b) opened the door and there were numerous police officers standing in the hallway. § 87(2)(b) heard an officer say, "The party has got to be over" and § 87(2)(b) responded, "As you can see everybody is leaving officer" referring to a number of people who were already leaving the apartment. § 87(2)(b) then became very upset and asked the officers if they had a search warrant. § 87(2)(b) noticed that § 87(2)(b) was getting upset so before he could get any angrier § 87(2)(b) grabbed him and escorted him out of the apartment and downstairs. § 87(2)(b) stopped at the 5th floor landing and § 87(2)(b) continued downstairs and out of the building. At this time § 87(2)(b) estimated that there was approximately 10 uniformed and plainclothes officers on the 6th floor landing and in the stairwell. From the 5th floor landing § 87(2)(b) could hear a loud commotion going on and she heard an officer say "stop resisting" and § 87(2)(b) responded, "I'm not resisting." § 87(2)(b) did not hear anything else that was said because there was so much going on between the officers in the hallway and the commotion going on at the 6th floor landing. § 87(2)(b) stated that it sound like there was a struggle going on in the hallway which is approximately 10 feet wide. § 87(2)(b) did not see anything that took place between § 87(2)(b) and the officers because she was not allowed to go back upstairs after leaving the apartment. § 87(2)(b) was not a witness to the incident either because he already left the building and was outside. § 87(2)(b) remained on the 5th floor landing while the incident took place and while she was standing there an additional 6-7 officers ran up the steps and joined the 10 that were already there.

§ 87(2)(b) estimated that approximately 20 minutes after the officers went upstairs they came back down with § 87(2)(b) in handcuffs. Two officers had § 87(2)(b) by his arms and two officers were holding § 87(2)(b) by his shirt and § 87(2)(b)'s pants were down around his ankles. As the officers brought § 87(2)(b) down the steps § 87(2)(b) walked down in front of them and heard § 87(2)(b) say, "Ya' all pushing me down the steps. I can walk officer, let me get up I can walk" however § 87(2)(b) did not turn around to see what was going on and again she did not witness anything that took place between the officers and § 87(2)(b). When § 87(2)(b) exited the building she stood right in front and watched the officers put § 87(2)(b) in a marked NYPD van. § 87(2)(b) and § 87(2)(b) were also arrested at this time for disorderly conduct and put in the NYPD van as well. § 87(2)(b) then went back upstairs to get her two children from § 87(2)(b)'s apartment. After § 87(2)(b) picked up her children they walked to 174th Street and Grand Concourse Avenue to try and hail a cab however before § 87(2)(b) could do so she encountered a Sergeant (identified through the investigation as Sgt. Nunez) who mentioned something about the party. § 87(2)(b) told Sgt. Nunez, "Oh when you go to your family functions you all don't enjoy yourself?" at which time Sgt. Nunez instructed an officer to place § 87(2)(b) under arrest for § 87(2)(b). When § 87(2)(b) arrived at the 44th Precinct § 87(2)(b) was lying on the floor handcuffed to a pole outside of a cell. § 87(2)(b) observed numerous bruises on § 87(2)(b) on his back, both arms and legs. § 87(2)(b) also observed lumps on § 87(2)(b)'s head. § 87(2)(b) stated that § 87(2)(b) complained about pain to his jaw as well as about being dizzy. § 87(2)(b) requested medical attention and was taken to § 87(2)(b) and § 87(2)(b) was released with a summons for § 87(2)(b) as was § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that she was not yelling or being loud in any way and at no time did she act disorderly.

Civilians Not Interviewed

§ 87(2)(b) § 87(2)(b) and § 87(2)(b) were not interviewed in connection with this case because they did not cooperate with the investigation. § 87(2)(b) missed her scheduled appointments on March 22, 2007, and March 30, 2007, and she did not call in advance to cancel or reschedule. Missed appointment letters were mailed to § 87(2)(b) after each of her missed appointments and a final please call letter was mailed to § 87(2)(b) on April 25, 2007. Also two final phone calls were made to § 87(2)(b) on April 25, 2007, one on her cell phone and one at her home number. There was no answer and two voicemail messages were left. § 87(2)(b) did not respond to any of the letters that were mailed to her house and she did not return the investigators phone calls. The letters were not returned to the CCRB. The investigator spoke with § 87(2)(b) on several occasions and § 87(2)(b) was well aware that her cooperation was necessary.

§ 87(2)(b) and § 87(2)(b) reside at the same address and phone number so any attempts made to contact § 87(2)(b) was also an attempt to contact § 87(2)(b) § 87(2)(b) and § 87(2)(b) did not appear for their scheduled interview on April 9, 2007, and they did not call in advance to cancel or reschedule. After further investigation and reviewing the details of the case it was determined that § 87(2)(b) and § 87(2)(b) statement would not alter the dispositions of the allegations because they did not witness the allegations made by § 87(2)(b).

Officer Identification

The investigator obtained Sgt. Osvaldo Nunez's name from the UF-61 complaint report. Sgt. Nunez is listed as the supervisor on the scene at the time of the incident. During his CCRB interview Sgt. Nunez acknowledged that he was present and involved in the incident with § 87(2)(b). Sgt. Nunez also provided the names of Lt. Patrick Cortright, PO Carlos Zapata and PO Miguel Sanchez during his CCRB interview and he confirmed that they were also on the scene at the time of the incident. During their respective CCRB interviews Lt. Cortright, PO Zapata and PO Sanchez all confirmed that they were present for the incident. During his CCRB interview Lt. Cortright also revealed that PO Robert Navarro was present during the incident and PO Navarro was interviewed at the CCRB and confirmed such.

Officer Statements

Sgt. Osvaldo Nunez

Sgt. Osvaldo Nunez was interviewed at the CCRB on May 25, 2007. Sgt. Nunez worked from 5:15pm on February 24, 2007, until 2:12am on February 25, 2007 with PO Carlos Zapata, PO Miguel Sanchez and Lt. Patrick Cortright. Sgt. Nunez was on duty and in uniform and he was the Impact supervisor. Sgt. Nunez was assigned to a marked van, #5771. Sgt. Nunez had an entry in his memo book regarding the incident that read, "0103hrs 10-10 (possible crime) narcotics sales at the rooftop landing of § 87(2)(b) 0108hrs requested 10-85 (need additional unit) at § 87(2)(b) Pushed by intoxicated male black approximately 5'10", 300lbs, two times into the wall. I sustained a hyperextended right thumb. Multiple arrests at location. 0150hrs 10-62 administrative at the stationhouse. 0240hrs arrived at § 87(2)(b) for treatment."

At approximately 1:03am on February 25, 2007, Sgt. Nunez received a radio call for a possible narcotics sale on the rooftop of § 87(2)(b) in the Bronx. Sgt. Nunez, PO Zapata, PO Sanchez and Lt. Cortright immediately responded to the location. Sgt. Nunez, PO Zapata and PO Sanchez entered the building while Lt. Cortright remained outside, in front of § 87(2)(b). Sgt. Nunez, PO Zapata and PO Sanchez walked upstairs to the 6th Floor landing where there is a stairway that leads to the roof. When the officers reached the 6th floor landing they could hear extremely loud music and a lot of noise coming from § 87(2)(b). Sgt. Nunez continued upstairs towards the roof however the door leading to the roof was locked and Sgt. Nunez never gained access to the roof. Sgt. Nunez, PO Zapata and PO Sanchez came back downstairs to the 6th Floor landing where they continued to hear loud music coming from § 87(2)(b) where a party seemed to be taking place. At this point Sgt. Nunez assumed that the call to 911 was for the noise coming from § 87(2)(b) which is located at the base of the steps that lead to the roof. Sgt. Nunez explained that instead of calling 311 to report a noise complaint people often call 911 and

report a narcotics sale or gun possession at the location hoping that officers will be dispatched to the location more quickly and address the noise.

Sgt. Nunez knocked on the door to the apartment at least 3 times but because of the noise nobody inside the apartment could hear the knocking. After several minutes § 87(2)(b) finally answered the door and spoke with Sgt. Nunez. Sgt. Nunez could see into the apartment at this point because § 87(2)(b) stood in the doorway with the door open and Sgt. Nunez estimated that there were approximately 200 people inside the apartment as well as a large amount of alcohol. Sgt. Nunez described the apartment as a small 1-bedroom apartment. Sgt. Nunez could see numerous young children inside the apartment among a large number of adults who Sgt. Nunez described as in no condition to care for children. Sgt. Nunez stated that most if not all of the adults were intoxicated and there were “piles” of empty alcohol containers in the apartment. Sgt. Nunez stated that § 87(2)(b) was extremely cooperative and calm at this point and they were able to carry on a civil conversation. Sgt. Nunez explained to § 87(2)(b) that it was getting late and the apartment was overcrowded and it was time to wrap up the party. § 87(2)(b) told Sgt. Nunez that he understood his point. While Sgt. Nunez spoke with § 87(2)(b) an unidentified male stood behind § 87(2)(b) and yelled, “Fuck this bullshit. They don’t have a warrant. These motherfuckers are always fucking with us. They don’t have a warrant and they don’t have a reason to be here.” Sgt. Nunez stated that the male was highly intoxicated and was making it very difficult for he and § 87(2)(b) to have a conversation. Sgt. Nunez asked § 87(2)(b) to step into the hallway so they could carry on their conversation and § 87(2)(b) did so. Sgt. Nunez stated that at no time did § 87(2)(b) or anyone else at the part ask for his name or badge number and he did not tell anyone “Don’t worry about my fucking name.” The intoxicated male also exited the apartment and continued to yell obscenities at Sgt. Nunez. Sgt. Nunez asked the male to go downstairs several times but the male ignored Sgt. Nunez’s requests. Sgt. Nunez maintained that it was at this point that he raised his voice for the first time. The male refused to go downstairs and Sgt. Nunez yelled, “Go downstairs you’re drunk.” The male walked down 1 flight of steps, but no further, and continued to yell at Sgt. Nunez from the 5th floor landing. § 87(2)(b) took offense to Sgt. Nunez yelling at the male and § 87(2)(b) motioned his head at Sgt. Nunez and lunged his shoulders forward towards him and yelled, “What the fuck are you screaming at him for?” This took Sgt. Nunez by surprise because up until that point § 87(2)(b) had been completely cooperative and calm. Sgt. Nunez interpreted § 87(2)(b)’s lunge as a “fighting stance” and Sgt. Nunez feared that § 87(2)(b) was going to strike him. Sgt. Nunez could smell alcohol on § 87(2)(b)’s breath and he feared that § 87(2)(b) would become more aggressive.

Sgt. Nunez decided to place § 87(2)(b) under arrest at this point. Sgt. Nunez placed his left hand on § 87(2)(b)’s right shoulder and attempted to spin him around to handcuff him but § 87(2)(b) broke Sgt. Nunez’s hold by throwing his right elbow in the air. § 87(2)(b)’s right elbow hit Sgt. Nunez’s arm and then § 87(2)(b) shoved Sgt. Nunez with two hands into the wall. Sgt. Nunez hit his back against the wall, bounced off, and then § 87(2)(b) shoved Sgt. Nunez into the wall a second time. At some point during one of the shoves Sgt. Nunez put his hand up to protect himself and his thumb was bent back and hyperextended. PO Zapata and PO Sanchez grabbed § 87(2)(b) by each arm and PO Zapata, PO Sanchez and Sgt. Nunez fell to the ground. Sgt. Nunez fell backwards onto the base of the steps that lead upstairs to the roof. § 87(2)(b) was at the base of the steps also and he proceeded to wrap his right arm around the banister leading to the rooftop and he refused to let go. § 87(2)(b) curled his arm around the banister in such a way that PO Zapata and PO Sanchez could not loosen § 87(2)(b)’s grip and handcuff him. Sgt. Nunez then removed his nightstick and hit § 87(2)(b) on the right tricep, between his elbow and shoulder, 5 or 6 times. Sgt. Nunez stated that the strikes had no effect on § 87(2)(b) and he still did not loosen his grip. Sgt. Nunez did not strike § 87(2)(b) anywhere else on his body with the nightstick and he stated that at no time did PO Zapata or PO Sanchez use their nightsticks on § 87(2)(b). Sgt. Nunez stated that neither he nor PO Zapata and PO Sanchez hit § 87(2)(b) with their flashlights nor displayed them at any point. Sgt. Nunez stated that he only carries a small flashlight and even if he did hit § 87(2)(b) with it, it would not have been effective. Sgt. Nunez called a 10-85 over the radio at which time Lt. Cortright came upstairs to provide his assistance. Approximately 10-15 officers responded to the location when Sgt. Nunez called the 10-85.

PO Zapata, PO Sanchez and PO Robert Navarro were finally able to pry § 87(2)(b)’s arm off of the banister and he was handcuffed. Sgt. Nunez maintained that § 87(2)(b) was not pepper sprayed at any point during the incident because the hallway was so small and enclosed that the pepper spray would have inhibited the officers as much as § 87(2)(b). § 87(2)(b) was lead downstairs and out of the building and transported to the 44th Precinct. Sgt. Nunez did not recall which officers escorted § 87(2)(b).

§ 87(2)(b) downstairs or which officers transported him to the precinct. Sgt. Nunez did not see anything that took place in the stairwell when § 87(2)(b) was escorted downstairs. Sgt. Nunez remained at the apartment and instructed the patrons at the party to disperse. Sgt. Nunez estimated that the entire incident with § 87(2)(b) took no more than five minutes. PO Sanchez and Lt. Cortright also suffered various injuries during the struggle with § 87(2)(b) and they also were treated at § 87(2)(b).

Lt. Patrick Cortright

Lt. Patrick Cortright was interviewed at the CCRB on June 22, 2007. Lt. Cortright worked from 6:15pm on February 24, 2007, until 3:00am on February 25, 2007 and he was not working with a partner. Lt. Cortright was on duty and in uniform and was the Impact Lieutenant. Lt. Cortright was assigned to a marked RMP in which he was the operator. Lt. Cortright had an entry in his memo book regarding the incident that read, "0103hrs at § 87(2)(b) 0108hrs 1085 at location 10-12x1 defendant violently resisted arrest/disobeyed verbal commands. Defendant charged me against the wall. Physical force was used. Defendant did cause injury to my left shoulder, impacted to the wall, right ankle and caused abrasions to hands. PO Fernandez w/ arrest. Defendant § 87(2)(b) § 87(2)(b) 8. Defendant was intoxicated with an alcoholic beverage on his breath. 0240hrs at § 87(2)(b)." ."

Lt. Cortright responded to § 87(2)(b) in response to what he believed was a noise complaint. When Lt. Cortright arrived at the scene Sgt. Nunez and PO Navarro were already on the scene and Lt. Cortright observed them enter the building and walk upstairs. Lt. Cortright and PO Sanchez, who was on the scene at this point, remained outside the front of the building on the sidewalk at this time. Lt. Cortright stated that from the sidewalk he could hear extremely loud music coming from an apartment on the 6th floor. Lt. Cortright also heard somebody talking on a microphone, possibly a DJ, and he could see a large number of people pressed up against a window on the 6th floor. Approximately 5 minutes later Sgt. Nunez called a 10-85 (need additional units) over the radio and Lt. Cortright immediately entered the building and ran upstairs to the 6th floor landing. When Lt. Cortright reached the 6th floor landing he observed Sgt. Nunez and PO Navarro in a physical struggle with § 87(2)(b) who Lt. Cortright described as a large man approximately 400lbs. § 87(2)(b) was swinging his arms from side to side preventing Sgt. Nunez and PO Navarro from handcuffing him. Lt. Cortright did not know why § 87(2)(b) was being placed under arrest and he did not know how the struggle ensued between the officers and § 87(2)(b).

Sgt. Nunez and PO Navarro gave § 87(2)(b) numerous verbal commands to stop resisting and give up his hands but § 87(2)(b) did not comply. Lt. Cortright grabbed § 87(2)(b) by the left arm and attempted to restrain § 87(2)(b) but § 87(2)(b) grabbed the railing on the steps and would not let go. § 87(2)(b) was able to gain leverage using the steps and he got up and drove Lt. Cortright backward into the wall. § 87(2)(b) was pressed against Lt. Cortright on the wall and Lt. Cortright gave § 87(2)(b) two knee stuns to the sternum to overcome the assault by § 87(2)(b). Lt. Cortright was then able to push § 87(2)(b) off of him and with the assistance of Sgt. Nunez, PO Navarro and PO Sanchez they were able to tackle § 87(2)(b) to the ground. At this time Lt. Cortright was able to gain control of § 87(2)(b)'s arms and handcuff him. § 87(2)(b) was then escorted downstairs however Lt. Cortright did not know which officers escorted § 87(2)(b). Lt. Cortright was not aware of any further physical force used on § 87(2)(b) while he was being taken downstairs. Lt. Cortright remained on the 6th floor landing while § 87(2)(b) was escorted out of the building and Lt. Cortright did not exit the building until several minutes later.

Lt. Cortright stated that at no time did he or any other officer pepper spray § 87(2)(b) because the entire encounter took place in the hallway which was an extremely confined space. If pepper spray was used it would have hindered the officers as much as it would have hindered § 87(2)(b). At some point during the struggle, Lt. Cortright did see an officer strike § 87(2)(b) on the arm with an asp however Lt. Cortright did not see which officer did so. Lt. Cortright did not see any officer use their flashlight to strike § 87(2)(b) and he stated that he did not do so at any point either. Lt. Cortright stated that he did not hear any officer curse at § 87(2)(b) or use obscene language towards him.

After Lt. Cortright left the scene he went directly to § 87(2)(b) to receive medical treatment. Lt. Cortright was diagnosed with a contusion/bruise to his left shoulder, a sprained ankle and abrasions to his hands. Lt. Cortright suffered the abrasions to his hands during the course of the struggle and the contusion/bruise to his shoulder when § 87(2)(b) drove him against the wall. Lt. Cortright stated that Sgt. Nunez and PO Sanchez also received medical treatment but he did not

know what they were treated for. Lt. Cortright stated that he did not see any injuries on § 87(2)(b) at the time of the incident and he did hear § 87(2)(b) complain of any. Lt. Cortright did not have any further interaction with § 87(2)(b) after he was escorted from § 87(2)(b). Lt. Cortright did not recall having a conversation with anyone else following the incident and he specifically did not recall conversing with § 87(2)(b) § 87(2)(b)'s fiancée.

PO Robert Navarro

PO Robert Navarro was interviewed at the CCRB on July 20, 2007. On February 24, 2007, PO Navarro worked from 5:30pm until 2:05am on February 25, 2007. PO Navarro was on duty and in uniform and was assigned to a marked NYPD van. PO Navarro worked "Impact Conditions" and he was not working with a specific partner. PO Navarro did not have any entries in his memo book regarding the incident.

PO Navarro, Sgt. Nunez, Lt. Cortright, PO Sanchez and PO Zapata were driving on patrol when a call come over the radio for a noise disturbance at § 87(2)(b) in the Bronx. PO Navarro, Sgt. Nunez and Lt. Cortright responded to the location immediately and they arrived at the apartment building within a minute. Upon arrival, Sgt. Nunez, PO Sanchez and PO Zapata entered the building and went upstairs to investigate the disturbance call while PO Navarro and Lt. Cortright remained downstairs and stood outside the building. Approximately 2 minutes later Sgt. Nunez called a 10-85 (need additional units) over the radio and PO Navarro and Lt. Cortright immediately entered the building and ran upstairs to the 6th floor where Sgt. Nunez was located. PO Navarro stated that as he went upstairs numerous civilians passed him coming downstairs.

When PO Navarro reached the 6th floor landing he saw Sgt. Nunez, PO Sanchez and PO Zapata struggling with § 87(2)(b) attempting to handcuff him. § 87(2)(b) was lying on his stomach and he would not give up his arms to be handcuffed. § 87(2)(b) was instructed numerous times to stop resisting and to give the officers his hands but he did not comply and continued to resist. PO Navarro did not know why § 87(2)(b) was on the floor or how it was that he got to the floor because when PO Navarro arrived on the scene Sgt. Nunez, PO Sanchez and PO Zapata were already struggling with § 87(2)(b). Sgt. Nunez, PO Sanchez and PO Zapata were having a difficult time controlling § 87(2)(b) because § 87(2)(b) was intoxicated and is a large man. PO Navarro estimated that § 87(2)(b) is approximately 5'7" and weighs between 250lbs and 300lbs. PO Navarro stated that the officers were trying to grab § 87(2)(b)'s arm but other than that he did not see any officer use physical force on § 87(2)(b). PO Navarro did not see any officer strike § 87(2)(b) with an asp or a flashlight and at no point did PO Navarro strike § 87(2)(b) with an asp or a flashlight. PO Navarro stated that he does not carry a flashlight when he is on patrol. PO Navarro provided his assistance and was able to handcuff one of § 87(2)(b)'s wrists while Sgt. Nunez, PO Sanchez and PO Zapata handcuffed the other. § 87(2)(b) was double handcuffed because of his size and the extent to which he was struggling. PO Navarro estimated that it took approximately 3 minutes to handcuff § 87(2)(b) from the time he arrived but PO Navarro did not know how long Sgt. Nunez, PO Sanchez and PO Zapata had been struggling with § 87(2)(b) prior to his arrival.

After § 87(2)(b) was handcuffed he was helped up off of the floor and he began apologizing profusely. PO Navarro heard § 87(2)(b) say, "I'm sorry it was just a kids party. I'm sorry it was just a kids party." PO Navarro stated that at this point it became very obvious that § 87(2)(b) was intoxicated because PO Navarro could smell the alcohol on § 87(2)(b)'s breath and he could also see that § 87(2)(b)'s eyes were bloodshot. PO Navarro then escorted § 87(2)(b) downstairs and PO Navarro acknowledged that § 87(2)(b)'s pants did fall down at this point. PO Navarro helped § 87(2)(b) pick up his pants and continued to walk § 87(2)(b) down the steps. PO Navarro stated that he did not hit § 87(2)(b) in the back of the head at any point and he did not recall § 87(2)(b) ever falling down. PO Navarro also maintained that he did not drag § 87(2)(b) down the steps on his back and buttocks. PO Navarro stated that he would not have knocked § 87(2)(b) down because picking § 87(2)(b) back up would have been very difficult considering his size. § 87(2)(b) was placed in the marked van and transported to the 44th Precinct.

PO Navarro did not observe any injuries on § 87(2)(b) nor did § 87(2)(b) complain of any injuries. § 87(2)(b) did not request medical attention while he was in PO Navarro's custody however PO Navarro later found out that § 87(2)(b) was taken to the hospital because he was having trouble

breathing. PO Navarro was not aware of any officers being injured during the incident and he did not observe any officers get injured during the altercation.

PO Miguel Sanchez

PO Miguel Sanchez was interviewed at the CCRB on August 15, 2007. On February 25, 2007, PO Sanchez worked from 5:30pm until 2:05am with Lt. Patrick Cortright. PO Sanchez was on duty and was in uniform and was the driver of marked van #5108. PO Sanchez did not have any entries in his memo book regarding the incident.

PO Sanchez and Lt. Cortright were driving on patrol within the confines of the 44th Precinct when a call come over the radio regarding narcotics at § 87(2)(b). PO Sanchez and Lt. Cortright immediately responded to the scene and when they arrived Sgt. Nunez, PO Zapata and the rest of the conditions team were already present. PO Sanchez could not recall whom the other members of the conditions team were. PO Sanchez, Sgt. Nunez and PO Zapata entered the building and walked upstairs to the 6th Floor while Lt. Cortright remained outside to secure to the front of the building. Sgt. Nunez knocked on the door of § 87(2)(b) because there was extremely loud music coming from the apartment and it was evident that there was a large party taking place. § 87(2)(b) answered the door and Sgt. Nunez explained to § 87(2)(b) that the party had to be shut down. PO Sanchez estimated that there were approximately 200 people inside the apartment including numerous children. The investigator showed PO Sanchez § 87(2)(b)'s arrest photo and PO Sanchez confirmed that § 87(2)(b) was the person who answered the door and spoke with Sgt. Nunez.

PO Sanchez stated that § 87(2)(b) was initially very cooperative and calm with Sgt. Nunez however it was obvious that § 87(2)(b) was intoxicated because PO Sanchez could smell the alcohol on his breath. PO Sanchez maintained that § 87(2)(b) exited the apartment on his own and Sgt. Nunez did not grab § 87(2)(b) and pull him out into the hallway. PO Sanchez also did not hear § 87(2)(b) ask for Sgt. Nunez's name and Sgt. Nunez did not tell § 87(2)(b) "Don't worry about my fucking name." While Sgt. Nunez spoke with § 87(2)(b) a number of people began to leave the party and walk downstairs. PO Sanchez stated that two unidentified males exited the apartment but instead of going directly downstairs they stopped in the stairwell and yelled and cursed at the officers. PO Sanchez stated that the two males continued to yell, "Fuck this we know our rights. Fuck you." At this point § 87(2)(b) "appeared to snap" and he grabbed Sgt. Nunez by the front of the shirt and shoved him backwards into the wall. Sgt. Nunez grabbed § 87(2)(b) by one arm and PO Sanchez grabbed the other and they attempted to pull § 87(2)(b) off of Sgt. Nunez. § 87(2)(b) then threw up his left arm, which struck PO Sanchez in the face and then § 87(2)(b) knocked PO Sanchez to the floor. § 87(2)(b) fell on top of PO Sanchez and then Sgt. Nunez fell on top of § 87(2)(b). As a result of falling to the floor and § 87(2)(b) falling on top of him PO Sanchez sustained injuries to his left wrist and left shoulder.

At this point Sgt. Nunez called a 10-85 because § 87(2)(b) was resisting arrest and he attempted to punch and kick Sgt. Nunez, PO Sanchez and PO Zapata. PO Sanchez stated that numerous officers responded to the 10-85 however he could only recall Lt. Cortright's name. PO Sanchez stated that they struggled with § 87(2)(b) for several minutes because he continued to flail his arms and not allow himself to be handcuffed. PO Sanchez stated that at no point did he kick or punch § 87(2)(b) nor did he see any other officers do so. PO Sanchez also stated that he did not see any officer use his nightstick, asp or flashlight to strike § 87(2)(b). PO Sanchez was carrying an asp at the time of the incident but PO Sanchez stated that it remained holstered throughout the incident and he never struck § 87(2)(b) with it. PO Sanchez was also equipped with a flashlight however he maintained that also remained on his belt and he never used it to hit § 87(2)(b). PO Sanchez adamantly denied that § 87(2)(b) was pepper sprayed. PO Sanchez stated that the hallway where the incident took place was extremely small and the use of pepper spray would have been a poor tactic because all of the officers would have been exposed to the pepper spray. After approximately 5 minutes of struggling with § 87(2)(b) the officers were finally able to get him handcuffed and under control. PO Sanchez could not recall which officer was able to handcuff § 87(2)(b) but it was a joint effort of all the officers.

Once § 87(2)(b) was handcuffed he was led downstairs and out of the building but PO Sanchez was not among the officers who escorted § 87(2)(b) outside. PO Sanchez remained on the 6th floor and assisted Sgt. Nunez in breaking up the party and dispersing the remaining crowd inside the apartment. PO Sanchez was not aware of anything nor did he see anything that took place while § 87(2)(b)

§ 87(2)(b) being escorted downstairs. PO Sanchez stated that there was still approximately 100 people inside the apartment including numerous children and PO Sanchez also observed a large amount of alcohol containers inside the apartment.

PO Sanchez did not observe any injuries on § 87(2)(b) at any point during the incident and he did not hear § 87(2)(b) complain of any injuries at any time. PO Sanchez did not have any further interaction with § 87(2)(b) after § 87(2)(b) was taken from the scene and to the precinct.

PO Carlos Zapata

PO Carlos Zapata was interviewed at the CCRB on September 13, 2007. PO Zapata worked from 5:30pm on February 24, 2007, until 2:05am on February 25, 2007. PO Zapata was on duty and was in uniform and was assigned to a marked police car. PO Zapata does not have any entries in his memo book regarding the incident.

PO Zapata responded to § 87(2)(b) in regards to a quality of life issue, which PO Zapata believed was a noise disturbance. When PO Zapata arrived at the location Sgt. Nunez was already on the scene with additional police officers. PO Zapata, Sgt. Nunez and 1 or 2 other officers went to the 6th floor hallway and they could hear music coming from § 87(2)(b). PO Zapata stated that the door to the apartment was slightly opened and Sgt. Nunez asked somebody in the apartment if he could talk with the owner. At this time § 87(2)(b) came to the door and spoke with Sgt. Nunez. The investigator showed PO Zapata § 87(2)(b)'s arrest photo and PO Zapata confirmed that § 87(2)(b) was the person who came to the door. PO Zapata stated that he could see into the apartment and he observed numerous intoxicated adults as well as a large number of young children inside. It appeared to PO Zapata to be a children's party based upon the large number of children that were present. § 87(2)(b) came out of the apartment and into the hallway to speak with Sgt. Nunez. PO Zapata stated that § 87(2)(b) entered the hallway on his own and Sgt. Nunez did not grab § 87(2)(b) and pull him into the hallway. PO Zapata did not hear § 87(2)(b) ask for Sgt. Nunez's name and PO Zapata did not hear Sgt. Nunez tell § 87(2)(b) "Don't worry about my fucking name." PO Zapata believed that there was some dialogue between Sgt. Nunez and § 87(2)(b) but PO Zapata could not recall what they talked about or anything that was said.

After a brief discussion between Sgt. Nunez and § 87(2)(b), § 87(2)(b) took a "fighting stance" towards Sgt. Nunez. § 87(2)(b) became very aggressive and PO Zapata stated that § 87(2)(b) pushed Sgt. Nunez backwards. Sgt. Nunez and the other officers attempted to subdue § 87(2)(b) but § 87(2)(b) flailed his arms and aggressively resisted being handcuffed. PO Zapata held the apartment door shut because by this time numerous people were walking out of the apartment and he did not want anyone else to get in the way of the arrest. PO Zapata stated that for the most part his back was to Sgt. Nunez and § 87(2)(b) but he did observe § 87(2)(b) resist. PO Zapata did not observe any officer hit § 87(2)(b) with a nightstick, asp or flashlight and PO Zapata contended that he did not do so either. PO Zapata observed § 87(2)(b) grab on to and hold the railing and the officers did try to pry § 87(2)(b)'s hands loose. PO Zapata was not involved in the struggle with § 87(2)(b) at any point because he continued to hold the door shut to keep people out of the hallway. PO Zapata stated that it took the officers several minutes to subdue § 87(2)(b) and handcuff him. PO Zapata was certain that § 87(2)(b) was not pepper sprayed. PO Zapata stated that the hallway was very small and if § 87(2)(b) were pepper sprayed he would have known because of the tight quarters. Once § 87(2)(b) was handcuffed he was led downstairs and out of the building. PO Zapata did not escort § 87(2)(b) downstairs and he did not recall the officers who did so. PO Zapata did not see anything that took place between the officers and § 87(2)(b) when he was taken downstairs. PO Zapata remained upstairs for 15-20 minutes and assisted Sgt. Nunez in clearing the apartment of the remaining guests. PO Zapata did not have any further interaction with § 87(2)(b). PO Zapata did not see any injuries to § 87(2)(b) nor did he hear § 87(2)(b) complain of any.

MOS Not Interviewed

PO Javier Fernandez § 87(2)(g) is listed as § 87(2)(b)'s arresting officer he was not present when § 87(2)(b) was arrested and he was not involved in apprehending him. § 87(2)(g)

§ 87(2)(b) PO Fernandez was not present when § 87(2)(b) was apprehended. § 87(2)(g)

Medical Documents

On § 87(2)(b) § 87(2)(b) was admitted to the Emergency Room at § 87(2)(b) in the Bronx. § 87(2)(b) was examined at 8:45am and he had multiple contusions to his body and arms and body aches which § 87(2)(b) stated was a result of being dragged down the steps. § 87(2)(b) complained of upper back pain and mild rib pain. X-rays were taken of § 87(2)(b)'s right elbow and multiple views revealed no breaks, fractures or dislocations. A chest X-ray was also taken and the results came back normal. § 87(2)(b) was diagnosed with minor bruises to his body and head and he was prescribed pain medication for relief (*Enc. 27a-27w*).

Police Documents

UF-61 Complaint Report: The complaint report states that at TPO § 87(2)(b) pushed Sgt. Nunez against the wall causing physical injury and that § 87(2)(b) violently resisted arrest. Sgt. Nunez is listed as the supervisor on the scene and the investigator used the UF-61 to identify Sgt. Nunez as a subject officer (*Enc. 28a-28b*).

44th Pct. Command Log: The command log contains an entry for the arrest of § 87(2)(b) and it was a delayed entry that was made at 2:55am. § 87(2)(b)'s physical condition is listed as normal and it indicates that § 87(2)(b) did not request medical attention (*Enc. 29a-29d*).

Prisoner Holding Pen Roster: § 87(2)(b) is listed on the pen roster and it states that § 87(2)(b) was taken to § 87(2)(b) at and returned to the precinct at 10:10am (*Enc. 30a-30b*).

44th Precinct Tour 3 Roll Call: The roll call confirms that Lt. Cortright, Sgt. Nunez, PO Zapata, PO Navarro and PO Sanchez were all on duty at the time of the incident. Sgt. Nunez, PO Zapata, PO Navarro and PO Sanchez were all working conditions and Lt. Cortright was the impact lieutenant (*Enc. 32a-32l*).

Sprint Report: At 12:52am a male caller called 911 and stated that a group of males on the roof of § 87(2)(b) were smoking drugs. At 1:02am the 44th Precinct field training unit responded to the location and at 2:25am there were 8 under at the location under the authority of Sgt. Nunez (*Enc. 33a-33b*).

AIDED's

Sgt. Osvaldo Nunez

The AIDED report for Sgt. Nunez states that Sgt. Nunez responded to § 87(2)(b) and while attempting to subdue a perpetrator § 87(2)(b) Sgt. Nunez suffered an injury to his right thumb. Sgt. Nunez was treated and released at § 87(2)(b) (*Enc. 14a-14e*).

Lt. Patrick Cortright

The AIDED report for Lt. Cortright states that Lt. Cortright responded to § 87(2)(b) and while attempting to subdue a perpetrator § 87(2)(b) Lt. Cortright suffered injuries to his right ankle and left shoulder. Lt. Cortright was treated and released at § 87(2)(b) (*Enc. 19a-19e*).

PO Miguel Sanchez

The AIDED report for PO Sanchez states that PO Sanchez responded to § 87(2)(b) and while attempting to subdue a perpetrator § 87(2)(b) PO Sanchez suffered injuries to his left hand and left shoulder. PO Sanchez was treated and released at § 87(2)(b) (*Enc. 24a-24f*).

LOD Reports

Sgt. Osvaldo Nunez

Sgt. Nunez did injure his right thumb during a struggle with a perpetrator who was violently resisting arrest. Lt. Cortright stated that he did see Sgt. Nunez complain of pain after the incident. Sgt. Nunez stated that at the time of the incident a perpetrator that he was trying to arrest pushed up. Sgt. Nunez raised his hands defensively upon being pushed and his thumb was pushed back causing a contusion as the perpetrator's body struck against it (*Enc. 13a-13b*).

Lt. Patrick Cortright

Lt. Cortright stated that while assisting in arresting § 87(2)(b) resisted in a violent manner and charged at Lt. Cortright causing his left shoulder to impact with the wall. § 87(2)(b) then resisted on the ground causing abrasions to Lt. Cortright's hands and causing him to twist his right ankle. Sgt. Nunez provided a witness statement stating that he personally observed Lt. Cortright injure his right ankle and shoulder while helping him subdue § 87(2)(b) who was violently resisting arrest. Sgt. Nunez recommended a line of duty designation. Lt. Cortright was treated and released at Westchester Square Hospital (*Enc. 18a-18d*).

PO Miguel Sanchez

PO Sanchez stated that while attempting to subdue a perpetrator he fell and landed between the perpetrator § 87(2)(b) and the stairs causing injuries to his left hand and shoulder. Sgt. Nunez stated that he did personally observe PO Sanchez injure his left hand while attempting to handcuff a perpetrator who was violently resisting (*Enc. 23a-23c*).

Conviction History and Disposition of Charges

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Subject Officer's CCRB History

Sgt. Osvaldo Nunez

Sgt. Nunez has been a member of the NYPD for 11 years and has had two CCRB allegations substantiated against him. In case #200100569 Sgt. Nunez was substantiated for using his radio as a club however he was found not guilty by the NYPD. In the same case Sgt. Nunez was also found to have provided a false official statement to the CCRB however there is no NYPD disposition regarding that charge (*Enc. 1a-1c*).

PO Carlos Zapata

PO Zapata has been a member of the NYPD for 11 years and has never had a CCRB complaint substantiated against him (*Enc. 2*).

PO Miguel Sanchez

PO Sanchez has been a member of the NYPD for 1 year and has never had a CCRB complaint substantiated against him (*Enc. 3*).

PO Robert Navarro

PO Navarro has been a member of the NYPD for 2 years and has had 1 CCRB complaint substantiated against him. In case #200612999 PO Navarro was substantiated for the use of physical force. Charges were recommended by the CCRB however no NYPD disposition was available at the time of this report (*Enc. 4*).

Complainants CCRB History

§ 87(2)(b)

This is the first and only complaint that § 87(2)(b) has filed with the CCRB (*Enc. 5*).

Conclusions

Undisputed Facts

The undisputed facts of this case are as follows: On February 24, 2007, § 87(2)(b) had a birthday party at her apartment, § 87(2)(b) § 87(2)(b) for her § 87(2)(b) old niece. § 87(2)(b) and his wife, § 87(2)(b) attended the party, which began on February 24, 2007, and carried over into the early morning of February 25, 2007. § 87(2)(b) acknowledged that he and others did consume alcohol while they were at the party. At approximately 1:00am Sgt. Nunez and the training unit team responded to the location in regards to a call about drug usage on the roof of the building. When Sgt. Nunez arrived and walked upstairs towards the roof he heard loud music coming from § 87(2)(b). Sgt. Nunez knocked on the door and § 87(2)(b) answered. When § 87(2)(b) opened the door Sgt. Nunez could see that there was a large party going on inside the apartment. Sgt. Nunez explained to § 87(2)(b) that it was time for the party to end. § 87(2)(b) and Sgt. Nunez spoke civilly for several minutes however a struggle then ensued between the two. Sgt. Nunez, PO Navarro, PO Sanchez and Lt. Cortright attempted to subdue § 87(2)(b) and place him under arrest. Sgt. Nunez acknowledged that he hit § 87(2)(b) in the shoulder 5 or 6 times with his nightstick. During the struggle Sgt. Nunez, PO Sanchez and Lt. Cortright were injured and they were later treated and released at § 87(2)(b).

Assessment of the Evidence

Sgt. Nunez spoke with § 87(2)(b) and explained to him that the party was getting out of hand and that it was time to end it. There was a large number of people, including numerous children inside the apartment and it was obvious that there was heavy drinking going on and § 87(2)(b) was drunk himself. When § 87(2)(b) answered the door he could see inside the apartment and he observed numerous alcohol containers around the apartment. It was clear to Sgt. Nunez from the beginning that § 87(2)(b) was intoxicated because he could easily smell the alcohol on § 87(2)(b)'s breath. § 87(2)(b) acknowledged that he had been drinking prior to the incident with Sgt. Nunez but he denied that he was drunk. § 87(2)(b) stated that he consumed 2 beers and 2 shots of Hennessy within the hour before Sgt. Nunez arrived. From the way Sgt. Nunez and the other officers described the amount of people at the party and the amount of alcohol they observed, in addition to the smell of alcohol coming off of § 87(2)(b)'s breath it is likely that § 87(2)(b) was more intoxicated then he claimed.

§ 87(2)(b) maintained that he asked Sgt. Nunez for his name and Sgt. Nunez responded, "Don't worry about my fucking name." Sgt. Nunez maintained that § 87(2)(b) never asked him for his name and at no time did he ever curse at § 87(2)(b). Sgt. Nunez stated that initially § 87(2)(b) was very cooperative and they were able to carry on a civil conversation. § 87(2)(b) was also in the doorway when § 87(2)(b) initially spoke with Sgt. Nunez and during her CCRB interview § 87(2)(b) did not mention that Sgt. Nunez cursed at § 87(2)(b). § 87(2)(b) also did not claim that § 87(2)(b) ever asked for Sgt. Nunez's name or badge number.

§ 87(2)(b) stated that Sgt. Nunez pulled him into the hallway and that he was hit with flashlights and batons. Sgt. Nunez maintained that § 87(2)(b) "snapped" when he heard Sgt. Nunez address § 87(2)(b) and tell him to go downstairs because he was drunk. Sgt. Nunez stated that § 87(2)(b) became very angry and then lunged at him as if he was going to fight Sgt. Nunez. § 87(2)(b) was able to push Sgt. Nunez against the wall causing an injury to Sgt. Nunez's thumb in the process. Sgt. Nunez and the other officers acknowledged that a struggle then ensued with § 87(2)(b) in order to place him under arrest. Sgt. Nunez and PO Sanchez grabbed § 87(2)(b) by each arm and as § 87(2)(b) continued to struggle Sgt. Nunez and PO Sanchez fell to the ground. § 87(2)(b) maintained that he was not resisting but by the accounts of all the officers that were present § 87(2)(b) did resist and presented a difficult struggle. Lt. Cortright was standing outside the building when the struggle began and he responded to the scene when Sgt. Nunez put a 10-85 over the radio. § 87(2)(g)

§ 87(2)(b) When Lt. Cortright arrived on the scene he observed § 87(2)(b) in a struggle with the officers. § 87(2)(b) wrapped his arms around

the railing and would not let go. Sgt. Nunez and the other officers could not pry § 87(2)(b)'s arms off of the railing because of § 87(2)(b)'s size. § 87(2)(b) is 5'11" and weighs nearly 300lbs. Sgt. Nunez admitted that he struck § 87(2)(b) in the bicep with his baton until § 87(2)(b) let go of the railing. Sgt. Nunez estimated that he struck § 87(2)(b) 5 or 6 times. Sgt. Nunez, PO Zapata, PO Sanchez and PO Navarro all denied that they ever hit § 87(2)(b) with a flashlight. There were no other witnesses that observed § 87(2)(b) being hit with a flashlight. Sgt. Nunez fully acknowledged that he struck § 87(2)(b) with a nightstick. § 87(2)(g)

§ 87(2)(b) also alleged that an officer pepper sprayed him while he was lying on the floor.

§ 87(2)(g)

The incident took place on the 6th floor landing directly outside the apartment and Sgt. Nunez, Lt. Cortright, PO Sanchez, PO Zapata and PO Navarro were all certain that § 87(2)(b)

§ 87(2)(b) was not pepper sprayed. § 87(2)(g)

§ 87(2)(b)'s medical records also do not indicate that he was pepper sprayed or complained of such.

When § 87(2)(b) was finally handcuffed PO Navarro escorted him downstairs and out of the building. However, § 87(2)(b) alleged that as he and PO Navarro walked downstairs PO Navarro hit him in the back of the head and then dragged him down the steps. PO Navarro acknowledged that he was the officer who escorted § 87(2)(b) downstairs but he denied that he ever hit § 87(2)(b) in the back of the head or dragged him down the steps. PO Navarro stated that he could smell the alcohol coming of § 87(2)(b)'s breath and § 87(2)(b)'s eyes were bloodshot. § 87(2)(b) was clearly intoxicated. PO Navarro stated that at one point § 87(2)(b)'s pants did fall down and he helped § 87(2)(b) pick them up. Considering that § 87(2)(b) was intoxicated his account of the incident cannot be relied upon.

Allegations Not Pled

§ 87(2)(g)

Recommendations

Allegation A: Sgt. Osvaldo Nunez refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) alleged that when he asked Sgt. Nunez for his name Sgt. Nunez responded, "Don't worry about my fucking name." Sgt. Nunez denied that he ever said this and PO Zapata, PO Navarro and PO Sanchez all maintained that they did not hear Sgt. Nunez refuse to provide his name and shield. Also, § 87(2)(b) stated that she was near the door while § 87(2)(b) spoke with Sgt. Nunez and during her CCRB interview she did not state that she heard Sgt. Nunez refuse to provide his name. § 87(2)(g)

Allegation B: Officers struck § 87(2)(b) with a flashlight.

§ 87(2)(g)

Sgt. Nunez, PO Zapata, PO Sanchez and PO Navarro all denied that they ever hit § 87(2)(b) with a flashlight. § 87(2)(g) Sgt. Nunez does not carry a flashlight and PO Navarro stated that he did not participate in subduing § 87(2)(b) at any time. PO Navarro was concentrated on keeping the apartment door closed.

PO Zapata and PO Sanchez do carry a flashlight however they are small § 87(2)(g)

Allegation C: Sgt. Osvaldo Nunez struck § 87(2)(b) with a nightstick.

Sgt. Nunez admitted that he struck § 87(2)(b) with his nightstick when § 87(2)(b) wrapped his arms around the railing and would not let go. Sgt. Nunez struck § 87(2)(b) in the bicep 5-6 times until § 87(2)(b) finally let go of the railing. § 87(2)(g)

Allegation D: An Officer used pepper spray against § 87(2)(b)

§ 87(2)(g) § 87(2)(b) maintained that he while he was on the floor an officer pepper sprayed him. § 87(2)(b) did not see who pepper sprayed him and he could not provide a description of the officer who did so. § 87(2)(b) never mentioned that § 87(2)(b) was pepper sprayed and she saw him right after the pepper spray would have been used. However, Sgt. Nunez, PO Zapata, PO Sanchez and PO Navarro all vehemently denied that § 87(2)(b) was ever pepper sprayed during the incident. § 87(2)(g)

§ 87(2)(b) was taken to the hospital after the incident and he never complained to the EMT's or to the doctors at the hospital that he was pepper sprayed. § 87(2)(g)

Allegation E: PO Robert Navarro used physical force against § 87(2)(b)

§ 87(2)(g) PO Navarro acknowledged that he was the officer who escorted § 87(2)(b) out of the building however he denied that he ever knocked § 87(2)(b) down and dragged him down the steps. Sgt. Nunez, PO Sanchez and PO Zapata stated that they did not see anything that took place between § 87(2)(b) and PO Navarro when he was escorted downstairs. § 87(2)(b) maintained that she did hear § 87(2)(b) say, "Ya' all pushing me down the steps. I can walk officer, let me get up I can walk" however she did not observe what took place. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: